

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re PRISCILLA H. et al., Persons
Coming Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

DAVID H.,

Defendant and Appellant.

D053365

(Super. Ct. No. EJ2820A-F)

APPEAL from judgments of the Superior Court of San Diego County, Gary M.

Bubis, Judge. Affirmed.

David H. appeals judgments terminating his parental rights to his children,
Priscilla H., David H., Jr., Antoinette H., Daniel H., Jasmine H. and Adrian H. He

contends the court erred by not continuing Welfare and Institution Code¹ sections 366.26 and 388 hearings; by finding the children adoptable when the court did not have adequate information about the prospective adoptive parents for David, Jr., Daniel and Jasmine, and there were indications the adoptive placement for Priscilla and Antoinette would be unsuccessful; and by selecting adoption as the permanent plans for the children although adoption could interfere with their sibling relationships. We affirm the judgments.

FACTUAL AND PROCEDURAL BACKGROUND

On October 26, 2006, police took six-year-old Priscilla, five-year-old David, Jr., four-year-old Antoinette, three-year-old Daniel and two-year-old Jasmine into protective custody. The children and their parents, Maria S. and David, were living in a storage facility. The children were extremely dirty and smelled of urine. Priscilla had nonaccidental bruises on her leg. She said her father had hit her. The Agency petitioned on behalf of the children under section 300, subdivisions (a), (b) and (j), the court ordered the children detained and they were placed in foster care.

The family's history with child protective services dated to 2003 and included referrals for domestic violence, neglect and substance and physical abuse. David had a substantial criminal history. In the past, the parents had not cooperated when social workers tried to assist them.

At the jurisdictional/dispositional hearing in January 2007, the court found the allegations of the petitions true, declared the children dependents of the court and ordered

¹ Statutory references are to the Welfare and Institutions Code unless otherwise specified.

the parents to participate in case plans that included counseling, a domestic violence program, psychological evaluations, parenting education and substance abuse treatment and testing.

The parents did not make progress toward reunification and did not visit the children after December 2006. At the six-month review hearing on June 27, 2007, the court terminated services and set a section 366.26 hearing to select permanent plans for the children.

On September 18, 2007, David was arrested on drug charges. He was released on probation on January 17, 2008, and later arrested again.

On January 20, 2008, Maria gave birth to Adrian H. He was taken into protective custody. The Agency petitioned on Adrian's behalf under section 300, subdivisions (b) and (j), alleging he was medically fragile, Maria was not capable of caring for him because of a developmental disability and the parents had not reunified with their other children.

At the jurisdictional/dispositional hearing for Adrian on February 19, 2008, the court found the allegations of the petition true, declared him a dependent child, denied reunification services under section 361.5, subdivision (b)(10) and set a section 366.26 hearing to select a permanent plan for him.

The social worker reported Priscilla and Antoinette had been living together in a prospective adoptive home and, on May 16, 2008, Daniel, David, Jr., and Jasmine were placed together in an approved adoptive home. On May 29 David and Maria petitioned

under section 388, alleging David had not received notice of the detention hearing regarding Adrian, and a guardian ad litem should have been appointed for Maria.

At the section 366.26 hearing for Priscilla, Antoinette, Daniel, David, Jr., and Jasmine on June 4, 2008, the court denied the parents' request for a continuance. The court found the children adoptable, terminated parental rights and selected adoption as the permanent plans. At a hearing on the section 388 petitions on June 17, the court again denied a request for a continuance and summarily denied the petitions. The social worker reported Adrian was also adoptable and had been placed in an adoptive home. At the section 366.26 hearing for Adrian on June 30, the court found Adrian to be adoptable, terminated parental rights and selected adoption as the permanent plan.

DISCUSSION

I

David contends the court erred by not granting his requests for continuances on June 4 and June 17, 2008. He argues he telephoned each time to explain why he was not present and the short continuances he requested would not be against the children's best interests.

The juvenile court may grant a continuance only on a showing of good cause. "[T]he court shall give substantial weight to a minor's need for prompt resolution of his or her custody status" (§ 352, subd. (a).) "Continuances are discouraged [citation] and we reverse an order denying a continuance only on a showing of an abuse of discretion [citation]." (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

The court did not abuse its discretion by denying David's requests for continuances. At the June 4 section 366.26 hearing for the five older children, David's attorney said David had telephoned and told him the transportation he and Maria had arranged to get to court had fallen through. David's counsel said:

"They had no way to get here to court. He did leave a return number to his aunt. I called her. She didn't have any information for me. I have no way to reach my client. On that basis, I would be requesting a brief continuance."

The court noted the parents had attended the jurisdictional hearing, but since January 2007 had not attended the dependency proceedings until just before the hearing. The court observed the parents had actual notice of the hearing because they were present with counsel when it was set at the May 2 hearing. The court said the parents had been basically absent from the children's lives for 18 months and it had no reason to believe their excuse was valid. Considering the parents' lack of participation in services and their failure to keep in contact with the children, the court did not abuse its discretion by deciding that David's telephone call on the day of the hearing to say they did not have transportation did not constitute good cause to grant a continuance.

The court also did not err by denying the request for a continuance at the June 17 hearing when it summarily denied the section 388 petitions. At that time, David's attorney again requested a continuance at the beginning of the hearing. She said David had left her a telephone message the night before, and when she returned the call in the morning, the paternal aunt said the parents were on their way to the hearing. The hearing had been scheduled for 8:30 a.m., and the court noted that it was 10:10 a.m., but the

parents still had not arrived and the attorney had not been able to reach them at the number David had provided. Again, David has not shown the court abused its discretion by denying his request for a continuance.

II

David asserts the court erred by finding the children were adoptable when it had little information about the prospective adoptive parents for David, Jr., Daniel and Jasmine, and there were indications Priscilla and Antoinette's prospective adoptive parent might not follow through with the adoptions.

Before a court frees a child for adoption it must determine by clear and convincing evidence that the child is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) "In resolving this issue, the court focuses on *the child*--whether his age [or her age], physical condition and emotional state make it difficult to find a person willing to adopt him [or her]." (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) Whether there is a prospective adoptive family is a factor for the court to consider, but is not determinative by itself. (*Ibid.*) The fact that children are with families who want to adopt them supports a finding they are generally adoptable. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) "On appeal, we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) The appellant bears the burden to show that the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

At the time of the section 366.26 hearing for the five older children, David, Jr., Daniel and Jasmine were placed together in an approved adoptive home and doing well. The evidence presented at the hearing indicated this family had taken the initiative to prepare to be parents for the children and were committed to adopting them. There was no evidence they were not capable of caring for the children. In addition, the Agency had located other families who were interested in adopting three siblings like David, Jr., Daniel and Jasmine.

The court also did not err by finding Priscilla and Antoinette were adoptable. The two sisters had lived together with their prospective adoptive parent since November 2006, a period of more than 18 months. Although the social worker initially was concerned the girls' caregiver would not follow through with adoption, since that time she had been fully committed to adopting them. She was a licensed foster parent and was progressing through the adoptive process. Also, there were other adoptive homes interested in adopting sisters like Priscilla and Antoinette. Substantial evidence supports the court's finding the children are adoptable.

III

David also contends the court erred by selecting adoption as the permanent plans because the children shared significant sibling relationships that would be damaged if they were adopted.

Under section 366.26, subdivision (c)(1)(B)(v), if the court finds the child will be adopted within a reasonable time, adoption must be ordered " 'unless the court finds a compelling reason for determining that termination [of parental rights] would be

detrimental to the child' because '[t]here would be substantial interference with a child's sibling relationship' " (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 811.) The purpose of this exception is to preserve long-standing sibling relationships that serve as "anchors for dependent children whose lives are in turmoil." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.) The sibling relationship exception contains "strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.*, at p. 813.) Factors for the court to consider under section 366.26, subdivision (c)(1)(B)(v) include the nature and extent of the sibling relationship, whether the siblings were raised in the same home, whether they share a close bond and whether continued contact is in the child's best interests, as compared to the benefits of adoption. If the court finds the parent has shown a sibling relationship that is so strong that severing it would be detrimental to the adoptive child, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952-953.)

The court did not err by determining the sibling relationship exception did not apply in this case. Priscilla and Antoinette were together in an adoptive home, David, Jr., Daniel and Jasmine in another and Adrian in a third adoptive home. The adoptive parents had indicated they were willing to maintain contact among the siblings, but even if this did not occur, the evidence showed the children would benefit more from permanent homes with their adoptive families than from maintaining their sibling relationships. Substantial evidence supports the court's finding the sibling relationship exception to termination of parental rights and adoption was not present.

DISPOSITION

The judgments are affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.